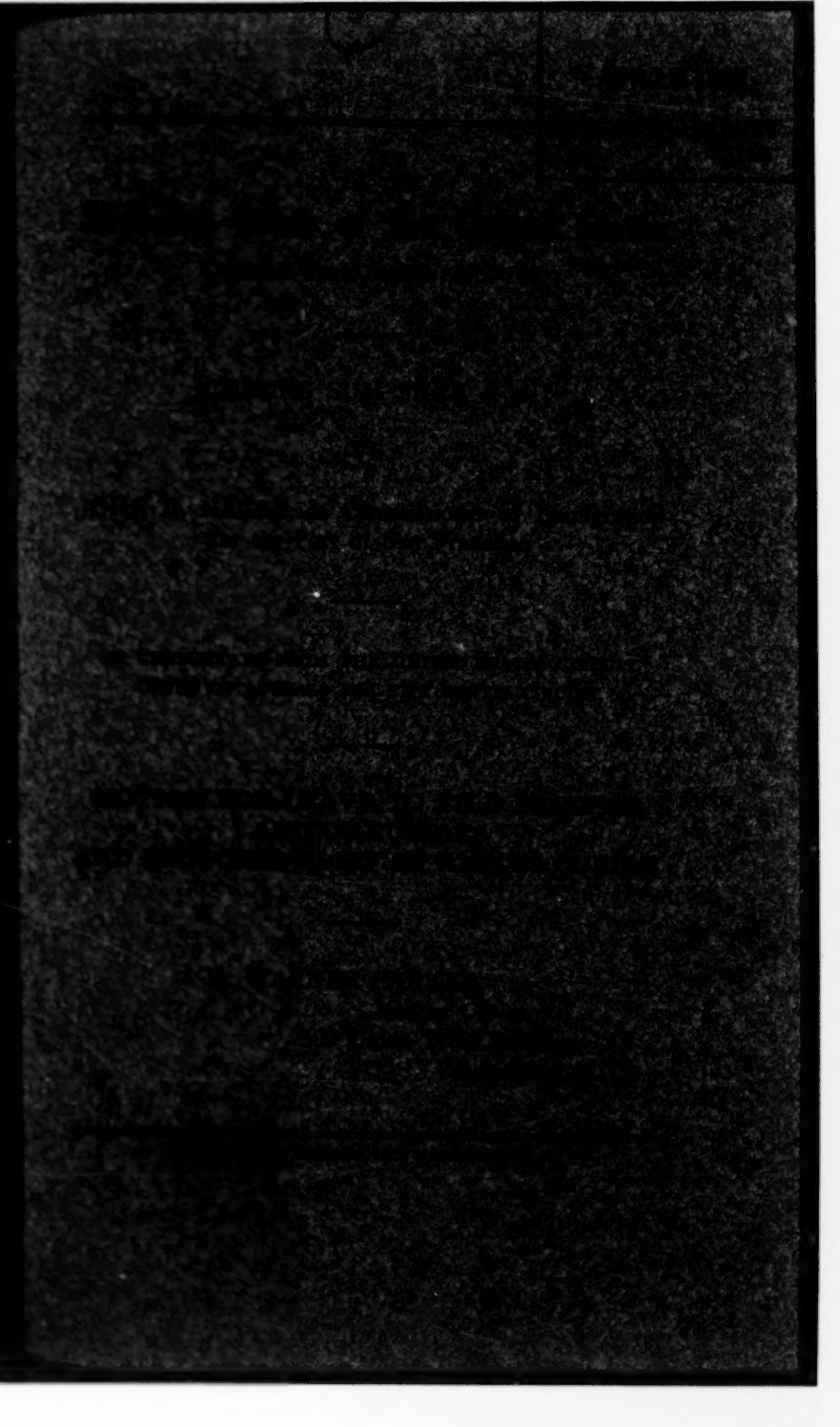

OUTLINE OF ARGUMENT

TABLE OF CASES CITED

OTHER AUTHORITIES

IN THE

Supreme Court of the United States

October Term, 1924.

CHEUNG SUM SHEE *et al.*,

vs.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco.

No. 769.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE;

Also

BRIEF SHOWING THAT QUESTION CERTIFIED BY THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD BE ANSWERED IN THE NEGATIVE.

Now comes A. WARNER PARKER, an attorney and counsellor of this Court, and represents that there is involved in the above entitled case a question arising under the Immigration Act of 1924 (43 Stat. L., 153, c. 190), certified to this Court under Sec. 239 of the Judicial Code, an answer to which may vitally affect the status and interests of a number of his clients, as such clients would be injured by a decision affirming the position taken in the above entitled case by the administrative

officials of the Government and by the District Court, Northern District of California.

Therefore, he prays leave to file a brief and argument as Amicus Curiae, to the end that the question certified by the Circuit Court of Appeals for the Ninth Circuit may be answered in the negative. He is permitted by Counsel for the petitioners and for the Government herein, respectively, to say that they have no objection to the granting of such leave.

The brief and argument proposed to be submitted follows:

STATEMENT OF THE CASE

The several petitioners (appellants) herein are wives or minor children of Chinese merchants, the husbands or fathers being lawfully domiciled in the United States. They were refused admission by the immigration officials at San Francisco because those officials conceived that the following two provisions of the Immigration Act of 1924 created an "inhibition against their coming to the United States:"

> "Sec. 13. * * *
> "(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."
>
> "Sec. 5. * * * An alien who is not particularly specified in this Act as a non-quota immigrant

> or a non-immigrant shall not be admitted as a non-quota immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration."

The District Court, Northern District of California, refused to grant a writ of habeas corpus and sustained the action of the immigration officials [2 Fed. (2nd), 995]; thereupon the case was appealed to the Circuit Court of Appeals, Ninth Circuit, which Court then certified to this Court the following question:

> "Are the alien Chinese wives and minor children of Chinese merchants who were lawfully domiciled within the United States prior to July 1st, 1924, such wives and minor children now applying for admission, mandatorily excluded from the United States under the provisions of the Immigration Act of 1924?" (Rec., p. 2.)

Of the exceptions attached to section 13 (c), by cross-references to section 3, only one, the last, is relevant here. Attaching that cross-referenced exception to the material part of section 13 (c), the whole provision reads as follows:

> "No alien ineligible to citizenship shall be admitted to the United States unless such alien [is] entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation."

No one disputes, in this case or elsewhere, that a Chinese merchant is still, as hertofore, entitled to enter the United States, to carry on trade or business here, by virtue of the provisions of the treaties now existing between China and this country. No question concerning his per-

sonal right of entry is here at issue. But the questions at issue are:

1. Considering the spirit and the purposes as well as the letter of the statute, is the exception in question broad enough to insure that the new law does not deprive such merchant of the natural and inherent right, never taken away by any previous statute or by any treaty, of having with him here, in the place of his own domicile, his wife and minor children? Does the new law so change the classification of the wife and children that they can no longer be regarded as belonging to the treaty protected class?

2. Or, on the other hand, must the exception, when considered by itself or in connection with other provisions of the statute, be regarded as utterly destroying the privilege of entry and residence heretofore enjoyed by such wife and minor chilren, and as cutting down the privilege of the merchant to such extent that, while still permitted to enter this country in pursuance of the treaties, if he cares to come or to remain alone and separated from his entire family, and to remain here temporarily or permanently as he may choose, he can no longer enjoy his natural and inherent right of having the immediate and dependent members of his family with him in the place of his domicile?

POINT I

The Specific Exemption in Favor of the Treaty Protected Classes Covers the Petitioners Herein.

By Article XVII of the treaty of commerce and navigation with China of 1903 (33 Stat. L., 2208), the immigration treaty with China of 1880 (22 Stat. L., 826)

is perpetuated and merged with said commercial treaty. In view of this, there can be no doubt that the position which has been taken by both the Department of State and the Department of Labor, to the effect that the treaty of 1880 should be regarded as a "treaty of commerce and navigation" within the meaning of clause (6) of section 3 (Department of Labor circular of instructions No. 55,266 of August 7, 1924, paragraph 9-A), is undoubtedly sound.

Article II of the 1880 treaty provides that Chinese merchants, "together with their body and household servants, * * * shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation."

Conceding that the right of entry guaranteed by the treaty is still preserved so far as merchants themselves are concerned, the administrative officers have in this case taken the position that the wives and minor children of such merchants can no longer be admitted. They base this holding upon the circumstance that clause (6) of section 3 does not say, in so many words, that the wives and minor children of men entitled to come here in pursuance of treaties shall be allowed to enter, and upon consideration in connection with section 13 (c), of other sections of the law (sections 5 and 25, hereinafter shown to be separate and distinct and to have a field of operation of their own). In the main, the contention seems to be that clause (6) of section 3, attached by reference to section 13 (c), even when considered in conjunction with Article II of the treaty, does not literally specify that the wives and minor children of merchants may enter.

In the early days of the administration of the Chinese exclusion laws this same contention was made. The ad-

ministrative officers then took the position that, because Article II of the 1880 treaty mentioned merchants and their body and household servants, without referring specifically to their wives and minor children, the latter were inadmissible. But the courts, including this Court, took a different view of the matter.

In the case of *Chung Toy Ho* and *Wong Choy Sin*, the administrative officers excluded the wife and child of a Chinese merchant, holding that they could not be admitted simply because they were so related to a man guaranteed the right of admission by the treaty. But Judge Deady pointed out that:

> "The station in life of the petitioners, being the wife and child of a merchant, also shows they do not belong to the laboring class. The petitioners are not within the purview of the exclusion act of 1888, which is confined to laborers. * * * Chinese women are not teachers, students, or merchants; and therefore they cannot, as such, obtain the certificate necessary to show that they belong to the favored class. But, *as wives and children of* 'teachers, students, and *merchants,' they do in fact belong to such class;* and the proof of such relation with a person of this class, entitled to admission, is plenary evidence of such fact." (42 Fed., 398, 399. Italics volunteered.)

This Court later, in the case *United States vs. Mrs. Gue Lim*, 176 U. S. 459, 464, was confronted with the same question. After pointing out that there had been some difference of opinion among the lower courts, this Court said:

> "It is sufficient to say that we agree with the reasoning contained in the opinion delivered by Judge

Deady. *Re Chung Toy Ho*, 42 Fed. Rep., 398, 9 L. R. A., 204. In our judgment the wife in this case was entitled to come into the country without the certificate mentioned in the act of 1884."

In the *Gue Lim* case this Court also said (p. 468):

"* * * When the fact is established to the satisfaction of the authorities, that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate."

In the very recent case of *Yee Won vs. White*, 256 U. S. 399, 400, 401, in referring to the Gue Lim decision, this Court said:

"But that case turned upon the true meaning of section 6, Act of July 5, 1884, which required every Chinese person other than laborers, as a condition of admission, to present a specified certificate. The conclusion was that the section should not be construed to exclude their wives, since this would obstruct the plain purpose of the treaty of 1880 to permit merchants freely to come and go."

The decisions from which the foregoing quotations are taken, clearly show that under the treaty of 1880 wives and children of merchants are entitled to enter the United States: first, by reason of belonging to the merchant class; second, because of the right of the husband and father, under the spirit of the treaty, to have them with him in the place of his domicile, so that he may enjoy the company of the wife and the care and custody of the children, and so that his privileges and opportunities for

taking advantage of the rights conferred upon him by the treaty, of entering this country freely and remaining as long as may be necessary to the conduct of his business, may not in any way be obstructed.

The situation with respect to merchants and their wives and minor children having been such as just described at the time of the enactment of the 1924 Act, and there being nothing in the exempting clause indicating the contrary, it would seem to be only reasonable to hold that those entitled to enter under clause (6) of section 3 "to carry on trade under and in pursuance of a present existing treaty" include, not only merchants and their "body and household servants," but the wives and minor children of merchants as well; for a "present existing" treaty had been so construed by the highest judicial authority and through a period of almost a quarter of a century had been so administratively applied, and it must be assumed that Congress knew of this judicial construction and administrative application when passing the new law and expected and intended that such law, dealing with the same subject, would be construed and applied in the same manner.

For the sake of emphasis and clear understanding, however, let us for a moment get away from the ineligible-to-citizenship angle of the matter and consider the exemption from the point of view of the quota-visa system.

We also have a treaty of commerce and navigation with Great Britain, standing since 1815. It is provided by article I of that treaty, *inter alia*, that subjects of Great Britain shall have the right freely to enter the territories of the United States, "and to remain and reside in any parts of the said territories * * *; also to hire and occupy houses and warehouses for the purposes of their

commerce." Could anyone suppose for a moment that, for example, if one of the proprietors of a large London importing and exporting house should determine to establish and assume personal charge of a branch of his business in New York, such alien would be classified under clause (6) of section 3 as a non-immigrant and admitted, without a visa, and his wife and minor children, whom he desired to have live with him in New York, classified as immigrants and, the British quota being exhausted at the time, denied visas and excluded? Yet, the principle there is exactly the same as it is here. If that merchant is entitled to have his wife and minor children placed in the same class as himself under the law, the Chinese merchant is also entitled to that privilege, for the substance of the exemption is the same in both cases. There, as here, also, denial to the merchant of the privilege of having the dependent members of his family with him in the place of his domicile "would obstruct the plain purpose of the treaty * * * to permit merchants freely to come and go." (Yee Won v. White, *supra.*) Moreover, "Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred." (Asakura v. Seattle, 265 U. S. 332, 342, and cases there cited.)

While the assertion may be confidently made that no administrative official would think of so applying the law to such a case as that set up hypothetically in the preceding paragraph, the result in this case shows that the administrative officials are applying clause (6) of section 3 to the cases of Chinese as though such clause provided that a male lien or an alien who is in his own personal status a merchant entitled to enter the United States to carry on trade, etc., shall be exempted. But the language

of the clause does not admit of any such restricted interpretation. It is broad enough on its face to include each and every alien, irrespective of sex or exact occupation, so long as such alien is entitled to enter the United States, for business or trade purposes, under and in pursuance of a treaty.

POINT II

The Purpose of the Specific Exemption was the Maintenance of the Status Quo with Respect to All Aliens Guaranteed Admission Privileges by Existing Treaties.

1. The legislative history of the exempting clause.

The exception in favor of treaty protected aliens which now constitutes clause (6) of section 3 has a clear legislative history, consideration of which can leave no doubt that the intention of the lawmakers was to preserve in their entirety the rights, immunities, and privileges enjoyed by certain classes of aliens in pursuance of existing treaties. That provision was not in the law as originally drafted (H. R. 6540, 68th Cong., 1st sess.). A copy of the bill as originally drafted had been referred to the Secretary of State for comment. On February 8, 1924, the Secretary of State wrote the Chairman of the Immigration Committee of the House, earnestly calling his attention to the fact that the bill, if enacted in the form in which it then stood, would be violative of existing treaties, and emphasizing the circumstance that the exemption in that bill in favor of aliens entering temporarily for business or pleasure [now clause (2) of section 3] was not sufficient to preserve all the treaty rights of aliens.

The bill had been reported to the House, however, before the letter of the Secretary of State was received. In order that such letter might be given proper consideration, the bill was recommitted by the House to its Immigration Committee; and when again reported to the House, the bill was accompanied by a report (H. R. Rep. No. 350, 68th Cong., 1st sess.), pointing out that since the receipt of that letter and other letters from the Secretary of State it had "been revised to meet as far as possible all of his suggestions as to administrative features," adding "this revision has occasioned so many changes * * * that it has been deemed advisable to reintroduce the bill which now becomes H. R. 7995. The new text, the Committee believes, meets all such suggestions fully." (Ibid., p. 2.)

In the report mentioned, *under the caption "Protection of Treaties,"* these further statements are found: "The Committee has incorporated in H. R. 7995 Secretary Hughes' proposal, but has used words which tie the exemptions to those persons properly exempted and entitled to enter the United States solely to carry on trade under and in pursuance of all existing treaties of commerce and navigation. * * * Your committee believes that this additional exemption * * * *is broad enough to take care of all the clauses of all our commercial treaties.* * * *." (Ibid., p. 3. Italics volunteered.) "The Committee believes that *the exemption of those entitled to enter under treaty provisions*, and the exemption of 'aliens visiting the United States as tourists, or temporarily for business or pleasure' fully satisfies treaty requirements." (Ibid., p. 4. Italics volunteered.)

It would be difficult to conceive of better or more convincing evidence of an intention to maintain the *status quo* with respect to treaty privileged persons than that

constituted of these positive assurances given to Congress by the Committee which reported the bill. Cumulative and, if possible, even more convincing evidence, however, is to be found in the record of the debates upon the bill, confining such references to statements made by Representatives or Senators who, because of their official connection with the drafting, reporting, or amending of the legislation, were in a position to speak with authority concerning the meaning of the provisions under consideration.

On April 5, 1924, Chairman Johnson of the House Committee, at the time in charge of the bill upon the floor of the House, made this statement: "I have already said this morning that this bill violates no treaty" (Congressional Record, Vol. 65, pt. 6, p. 5661), undoubtedly referring to his remarks of that morning to the effect that "We undertake to make full provision for all who may properly come to the United States as travelers or tourists on a temporary stay, *and all who may want to come in under any of the provisions of any treaty we may have with the other nations of the world.*" (Ibid., p. 5649. Italics volunteered.) Then, on May 9, 1924, Chairman Johnson said: "We have a fair bill. It takes care of all our relations with the nations of the world. *It protects every treaty with all the nations of the world.* It is absolutely fair." (Ibid., pt. 8, p. 8229. Italics volunteered.) Again "Of course there is a saving clause in the law that takes care of those entitled to be taken care of by the treaty. That is where so many misunderstand the Chinese treaty." (Ibid., p. 8233.)

In enacting this legislation, a separate bill (S. 2576) was passed in the Senate. Later this bill was merged with the House bill (H. R. 7995), this being done by a Conference Committee of the two Houses. The Senate

bill, when reported to the Senate by its Committee, contained nothing corresponding either to what is now subdivision (c) of section 13 or clause (6) of section 3. Senator Shortridge endeavored to have an amendment adopted placing in the Senate bill a provision similar to subdivision (c) of section 13 of the law as finally enacted, and also an amendment embodying the exception now found in clause (6) of section 3. Addressing the Senate on April 7, 1924, with special reference to the objections raised by the Secretary of State in his letter of February 8th, and the exemption proposed to meet those objections, Senator Shortridge said: "What Secretary Hughes feared was lest by this legislation we *offend against existing treaties. We have avoided that altogether in the bill.*" (Congressional Record, Vol. 65, pt. 6, p. 5743. Italics volunteered.) He also stated: "As the bill was first introduced into the other House * * * it did not contain the present provision covered by my amendment, which respects fully and unequivocally the treaty of 1911, so that neither Japan, *nor China*, nor Siam, nor any of the nations of the earth can object to our action if we adopt this measure *upon any suggestion that it is violative of any treaty of commerce and navigation.*" (Ibid., p. 5745. Italics volunteered.) If it were necessary to pursue this further, references might be given to other significant remarks made by Senator Shortridge (Ibid., p. 5746-5747, and Ibid., p. 6304), and to comments along similar lines made by Senator Reed of Pennsylvania, the author of the Senate bill, bearing upon the amendment eventually adopted by the Senate incorporating in its bill what is now clause (6) (Ibid., pp. 6315-6316); and to a colloquy between Senators Shortridge, McKellar and Reed (Ibid., pp. 5743-5745).

2. Judicial decisions concerning the exempting clause.

The status under the new law of wives and minor children of Chinese merchants has been considered by three District Courts, i. e., those for the Western District of Washington, the District of Massachusetts, and the Northern District of California.

Judge Neterer, in the first decision rendered [*In re Goon Dip, et al.*, 1 Fed. (2d), 811], pointed out that the courts had for more than a generation construed the treaty with China of 1880 as admitting the wives and minor children of Chinese merchants; and that the report of the House Immigration Committee and the express provisions of the new law clearly show that the intent of Congress was not to disturb the relations existing under the treaty and prior laws; and expressed the view that the new law, the treaty, prior laws, prior judicial construction of the treaty and laws, and the departmental construction, "must all be considered together, and under such consideration the court will be slow to assume that Congress intended to treat the treaty stipulations as a scrap of paper." (Citing *Chew Heong vs. United States*, 112 U. S. 536, and *United States vs. Mrs. Gue Lim*, 176 U. S. 459.)

In the second case (In re *Chin Hem Shu*, Civil No. 2833, Dist. of Mass., decided Dec. 11, 1924), Judge Lowell wrote no opinion, but followed the decision of Judge Neterer in the first case.

The third case is the one now at bar [2 Fed. (2d), 995]. In it Judge Kerrigan did not even refer to the previously rendered decision of Judge Neterer. He stated that his conclusions were reached with "difficulty and some hesitation." He also stated that, were it not for

the provisions of sections 5 and 25 of the new law, he "would find no difficulty in agreeing" with the contentions that the treaty with China of 1880 should be regarded as a treaty of commerce and navigation within the meaning of clause (6), section 3, that such treaty had been construed by the Supreme Court as admitting the wives and minor children of merchants, and that Congress had enacted clause (6) with the knowledge of such judicial construction.

Evidently Judge Kerrigan's attention was not called to the distinct nature of the two systems of exclusion set up by the act, hereinafter described (pp. 17-18, post), nor to the fact that sections 5 and 25 are in origin and purpose a part of the quota-visa system and cannot be applied to such a case as this without conflicting with the purpose of clause (6) to preserve treaty rights inviolate. His attention escaped the fact that to deny a merchant entitled to enter in pursuance of such a treaty the right to bring in his wife and minor children would be to obstruct the treaty; and he did not observe the principle that a liberal construction should obtain where the furtherance of the objects of a treaty is involved. Moreover, he overlooked the fact that the treaty of 1880 had been construed to admit the wives and children of merchants because they are themselves "of the merchant class;" and his attention, apparently, was not directed at all to the history of the legislation, as hereinbefore given.

POINT III

The Specific Exemption Favorable to Petitioners Is Not Nullified or Modified by Other Provisions of the Statute.

As already seen, the administrative officers have taken the view that these petitioners are excluded because it is provided by section 5 of the 1924 Act that aliens who are not specifically classified as non-immigrants or non-quota immigrants are not to be admitted as of those classifications "by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration." Moreover, while no provision of the law other than sections 13 (c) and 5 were invoked against petitioners by the administrative officers, the last clause of section 25 was cited in the decision of the District Court. Therefore, it seems desirable briefly to comment upon section 25 as well as section 5.

1. The non applicability of Section 5.

It is conceived that there are two reasons why the view of the administrative officials concerning section 5 cannot logically be maintained.

In the first place, these wives and minor children of merchants are not asking to be admitted simply because they are related to other aliens who are admissible. Their claims to admission rest upon other and higher grounds than simply that. Being the wives and children of merchants—of men who are, by virtue of their status and occupation, entitled to enter pursuant to an existing treaty—these wives and children are themselves members of that permitted class, are themselves protected against exclusion by the new act because they are of a class heretofore judicially and administratively recognized as being entitled to enter in pursuance of our treaty with China. Nor do these wives and children seek admission simply as "being exempted from the operation of any

other law regulating or forbidding immigration;" for the exemption is not only from all other laws regulating or forbidding immigration, but, as has been shown, also from this present statute.

Secondly, section 5, by its caption, its text, and its origin and legislative history, is shown not to be inintended to apply to aliens whose exclusion under the terms of this statute is predicated upon their being "persons ineligible to citizenship," but only to aliens whose exclusion under the statute rests upon questions of status with respect to the quotas provided for countries other than those countries from which such aliens as the petitioners herein, persons ineligible to citizenship, emigrate to the United States.

The Immigration Act of 1924 sets up two systems, under one of which certain "immigrants" and under the other of which certain "aliens" are excluded. These may be described as the quota-visa system and the ineligible-to-citizenship system, respectively. It is apparent on the face of the statute that the provisions with regard to immigration visas are part and parcel of the provisions establishing quotas and specifying the method of their determination and their effects. Immigration visas are to be procured by immigrants, and issued by consuls, respectively, because the lawmakers have deemed that the best way of keeping accurate and current account of the reductions occurring from day to day in the various quotas, and of giving assurance that aliens claiming to be nonquota immigrants are indeed such. The question of the separateness of the ineligible-to-citizenship provisions from those relating to the quota-visa system is discussed in more detail in the brief submitted by the writer in pending case No. 770, *Chang Chan, et al., vs. John D. Nagle,* because that question is regarded as of more sig-

nificance and importance in that than in this case. Without going further into the matter here, the liberty is taken of referring to that brief, pp. 4-9.

The caption and text of section 5 clearly show that the authors of the legislation when incorporating that section in the statute had in mind solely aliens who fall within the quota-visa provisions. Its caption is "Quota Immigrants," and its text refers to quota-immigrants, non-quota immigrants, and non-immigrants; while section 13 (c) does not exclude simply immigrants, but excludes aliens "ineligible to citizenship." And these wives and children are not seeking admission as non-immigrants or non-quota immigrants, exempted from the operation of the quota-visa provisions of the law, but are seeking admission as the wives and children of men who belong to the treaty protected classes and therefore members themselves of such classes, and for that reason exempt from the provisions of the law which exclude persons ineligible to citizenship.

Moreover, the circumstance that the caption and text of section 5 show that that provision is intended to operate in connection with the quota-visa separate system of exclusion created by the act is corroborated, to a practical demonstration, by the legislative history of section 5. The ineligible-to-citizenship system of exclusion originated with the House Immigration Committee and appeared in the bill reported by that Committee (H. R. 7995). But so much of section 5 as is here under discussion originated with the Senate Immigration Committee, whose bill (S. 2576) contained nothing relating in the remotest degree to the ineligible-to-citizenship system. (See Sec. 3, S. 2576, p. 5, and Congressional Record, Vol. 65, pt. 6, p. 5418.) When the two bills had been passed by the respective Houses they were referred to a Commit-

tee of Conference, by which Committee their provisions were merged into the one comprehensive measure eventually enacted; and in that process of merging the provision under discussion was transferred, with unimportant textual changes, from its position in the Senate bill into section 5 of the act.

It seems apparent, furthermore, that the particular purpose of section 5 was to meet the decision of the Circuit Court of Appeals, Second Circuit, in the case *United States ex rel Gottlieb vs. Commissioner of Immigration,* 285 Fed. 295. That decision was not reversed by this Court until the very day on which the 1924 Act was approved by the President, to wit, May 26, 1924. (*Commissioner of Immigration vs. Gottlieb,* 265 U. S. 310.) As stated by Middleton Beaman, Esq., Legislative Counsel of the House of Representatives: "Some 8,000 aliens were admitted under a construction of the law by the Circuit Court of Appeals for the Second Circuit in the Gottlieb case, which case and cases following it held that the wives and children of persons exempt from the quota were themselves exempt." (American Bar Association Journal, July, 1924, pp. 490, 492.) In other words, the 1921 Quota Act had been so construed judicially as to admit aliens not particularly specified in such act as non-quota immigrants because such aliens were related to aliens so specified therein. It seems altogether logical, therefore, to conclude that the Senate Committee placed the provision in question in its act in order to guard against the possibility of the new law being construed in like manner.

2. The non-applicability of Section 25.

It is true that the House Immigration Committee had also incorporated in its bill a provision the obvious pur-

pose of which was to guard against a repetition of the judicial construction above mentioned. That Committee's provision is the second clause of the last sentence of section 25 of the bill (H. R. 7995) and of the act, which is to the effect that no alien admitted by any previous immigration law shall be admitted if excluded by any provision of the new act.

The petitioners herein not being, as already shown, persons "excluded by any provision of this act," clearly this clause of section 25 could not operate to exclude them. Moreover, the origin and history of the provision indicate that it was intended for another purpose; and to give it the force with respect to these petitioners which the District Court accorded it would be to throw it into absolute conflict with clause (6), section 3, the purpose of which, as already seen, is to preserve all treaty rights.

Obviously the House, like the Senate, was much concerned because of the fact that about 8,000 excess quota aliens had been admitted as the result of the Gottlieb decision. Inasmuch as there appeared nowhere else in the House bill any provision calculated to have the same effect as the Senate bill provision (section 5), and inasmuch as the provision of section 25 above described clearly is calculated to produce that same result, it can be logically and confidently assumed that the said provision of section 25 constituted the effort of the House Committee to meet the situation created by the Gottlieb decision. That decision had announced a principle under which a large number of quota aliens were admitted as exempt from the 1921 quota act because they had been enumerated as exempt from a previous immigration law; and the House Committee undertook to meet such situation by providing that under the new law no quota alien excluded thereby should be admitted as an exempt simply

because he belonged to a class exempted from the operation of some previous law. When it is remembered that this act did not follow the usual course of being reported by the House Committee, passed by the House, referred to and reported by the Senate Committee, and passed by the Senate; but that it is a composite measure passed practically simultaneously by the two Houses as separate bills, and then merged in Conference, the fact that these two provisions, intended and calculated to produce the same result, are now found in the law is no cause for wonder.

POINT IV

Upon the grounds hereinbefore stated, it is respectfully submitted that the question certified by the Circuit Court of Appeals, Ninth Circuit, should be answered in the negative.

Respectfully submitted,

A. WARNER PARKER,

Amicus Curiae.